



May 26, 2011

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th St. SW  
Washington, DC 20554

Re: WT 11-65, Applications of AT&T Inc. and Deutsche Telekom AG For Consent To Assign or Transfer Control of Licenses and Authorizations

Dear Ms. Dortch:

On May 25, Harold Feld and John Bergmayer of Public Knowledge (PK) met with members of the AT&T/T-Mobile transaction team. Members of the team attending the meeting were Jim Bird, Neil Dellar, Monica DeLong, Nese Guendelsberger, Kathy Harris, Virginia Metallo, Paul Murray, Paul de Sa, Peter Trachtenberg, and Melissa Tye.

## **Spectrum**

Spectrum is a key theme of this merger. This is why PK and its PISC allies asked the Commission to consolidate consideration of this transaction with other of AT&T's proposed spectrum transfers, notably the Qualcomm licenses. Whether or not this merger is approved, those licenses should not be transferred to AT&T as they would give it too much power in the wireless industry. But if, contrary to the facts in the record, the Commission grants the Qualcomm transfer, this could undermine many of AT&T's claims about its need for more capacity. The best way to work through these different possibilities is in a combined proceeding.

## **Market Definition**

However the Commission defines the relevant markets in this transaction, the merger should be denied. The merger poses anti-competitive harms in many markets, such as local, national, consumer, enterprise, voice, and data. But the effects on the national wireless market are arguably the most severe. In past mergers, the Commission has identified many discrete markets and noted the effects on each. It then concentrated its analysis on those markets most under threat—generally local wireless markets which, then as now, are generally uncompetitive and highly concentrated. But no past wireless mergers posed as grave a threat to the national market as this one. Indeed, this merger would turn the national wireless market into an effective duopoly. Historically, when the facts change the focus of the Commission's analysis changes with them. Therefore, following its precedents, the Commission should analyze the competitive harms to the national wireless market and deny the merger on that basis, while noting the harms this merger would cause in other markets, such as enterprise, data, and special access.

## **Public Interest Harms**

Although it fails even on that basis, the Commission must not look at this merger only through the lens of antitrust. It must determine whether the merger is in the public interest—indeed, that it provides affirmative public interest benefits.

It plainly does not. Rather, several public interest goals of the Communications Act would be frustrated by the merger. For example, the Commission is charged with promoting a communications service at reasonable and affordable rates, preventing unjust and unreasonable

discrimination by carriers, promoting the competitive development of the Internet, and maximizing user control of content. All of these goals would be best served by blocking the merger, and leaving competition in place.

Respectfully submitted,

/s John Bergmayer  
Staff Attorney  
Public Knowledge

cc:

Jim Bird  
Neil Dellar  
Monica DeLong  
Nese Guendelsberger  
Kathy Harris  
Virginia Metallo  
Paul Murray  
Paul de Sa  
Peter Trachtenberg  
Melissa Tye